

LEGISLATION

Effective August 21, 1998

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LEGISLATION

ETP: A Brief History

In 1982, the California State Legislature created the Employment Training Panel (ETP) as a cooperative business-labor program. It was created in a year of high unemployment and declining resources for employment training and vocational education. ETP was designed to fund training to meet the needs of employers for skilled workers and the need of workers for good, long-term jobs. It was also created out of a recognition of the critical role that retraining can play in mitigating the impact of an economic transition on both workers and employers.

This employer-supported training is used to improve the economic climate by training new workers for full-time employment and by retraining workers in danger of being displaced as a result of a recession, technological advancements in the workplace or aggressive foreign and domestic competition.

The original legislation establishing ETP also established the Employment Training Fund (ETF). Each private, for-profit California employer is required to contribute one-tenth of one percent (0.1%) of the first \$7,000 of wages of each employee subject to unemployment insurance taxation (an annual maximum of \$7.00/employee) to the ETF. At the same time, employer contributions into the Unemployment Insurance Fund were reduced by the same amount paid to the ETF.

The ETP enabling Legislation has been amended numerous times. **Per the 2000-01 Budget Act (effective July 1, 2000) the Legislation is revised, providing for the appropriation of funds from the Employment Training Fund for allocation by the Employment Training Panel for: (1) the local assistance portion of welfare-to-work activities under the CalWORKs program; and, (2) for training of workers in regions suffering from high unemployment and low job creation, including the working poor.**

An Index is attached.

EMPLOYMENT TRAINING PANEL LEGISLATION

(August 21, 1998)

Division 3, Part 1, Chapter 3.5 of the UI Code

10200. The Legislature finds and declares the following:

- (a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive work force, and in developing the skills of frontline workers. For purposes of this section, "frontline worker" means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

- (1) Foster job creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs that are threatened by out-of-state competition.
- (2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.
- (3) Result in secure jobs for those who successfully complete training.
- (4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the Job Training Partnership Act (JTPA), the Carl D. Perkins Vocational Education Act, the Greater Avenues for Independence Program (GAIN), the Enterprise Zone Act, the Employment and Economic Incentive Act, and the Stewart B. McKinney Homeless Assistance Act, or apportionment fund allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this Chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

- (b) The employment training panel, in funding projects that meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:
 - (1) Result in the growth of the California economy by stimulating exports from the state, and the production of goods and services that would otherwise be imported from outside the state.
 - (2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.
 - (3) Develop workers with skills that prepare them for the challenges of a high performance workplace of the future.
 - (4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.
 - (5) Are jointly developed by business management and worker representatives.
 - (6) Develop career ladders for workers.
 - (7) Promote the retention and expansion of the state's manufacturing workforce.
- (c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Job Training Partnership Act, the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Trade and Commerce Agency.

10201. As used in this chapter:

- (a) "Employer" means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, or any nonprofit organization which has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3.

Any public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) or Chapter

3, shall be deemed to be an employer only for purposes of placement new hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employers. (Stats 1990)

(b) "Eligible participant" means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and has established an unemployment insurance claim in this state, or has exhausted eligibility for unemployment insurance benefits from this state within the previous 24 months. (Stats 1990)

(2) Employed for a minimum of 90 days, but is determined by the panel to be likely to be displaced and therefore claiming unemployment insurance benefits because of reductions in overall employment within a business, elimination of the person's current job, or a substantial change in the skills required to remain employed due to technological change or other factors, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide, at the option of the employer or the contractor, either of the following:

(A) Certification of the specific facts that threaten the continued employment of the trainee, and a plan for assuring with reasonable certainty that the training being proposed will contribute to the long-term job security of the trainee. The plan shall include, but not be limited to, a general description, with respect to the facility at which the trainee is employed, or other actions planned by the employer, such as technological changes, additional training, management adjustments, and organizational changes, for the purposes of enhancing the effectiveness of the proposed training. The plan shall also include a statement of how the employer plans to sustain the commitment to workplace training after the contract ends and how the training will affect the productivity and employment security of the workforce. The panel may modify the specific requirements of this subparagraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(B) Evidence that the workers proposed to receive retraining have been given written notice that their employment will be terminated

within two years of the date the application is presented to the panel.

- (3) Employed for a minimum of 90 days, but who is determined by the panel to be in need of training in order to facilitate an employer's adaptation to a high performance workplace or diversification of the production of goods or services in order to meet the productivity goals and competitive needs of the employer's operation, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment. In making a finding of eligibility under this paragraph, the panel shall require an employer or contractor to submit evidence of change, or plans to change, to a high performance or diversified workplace and a statement of how the employer plans to sustain the commitment to workplace training after the contract ends and how the training will affect the productivity and employment security of the workforce. For purposes of this subdivision, "high performance workplace" means a workplace that invests in the training of frontline workers, as defined in subdivision (a) of Section 10200, to equip these workers with problem solving and decision making skills that result in increased productivity.
- (4) Employed, but who is determined by the panel to be qualified to be trained or retrained in skills for which there is a demonstrable shortage and in a field where new employment opportunities will be created for other persons defined in paragraph (1) if this retraining takes place. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide a job for at least one unemployed person for each person retrained.
- (c) "Panel" means the Employment Training Panel created by Section 10202.
- (d) "Fund" means the Employment Training Fund created by Section 1610.
- (e) "Department" means the Employment Development Department.
- (f) "Training agency" means any private training entity or local educational agency.
- (g) "Job" means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security. Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 50 percent, in the case of new hire training, or 60 percent, in the case of retraining, of the State or regional average hourly wage. However, in no case shall the employment result in earnings of less than 45 percent of the state average hourly wage for

new hire training and 55 percent of the state average hourly wage for retraining. The panel may consider the dollar value of health benefits that are voluntarily paid for by an employer when computing earnings to meet the minimum wage requirements.

- (h) "Private Industry Council" means an entity established pursuant to Section 15030.
- (i) "New hire training" means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.
- (j) "Retraining" means employment related skill and literacy training for persons who are employed prior to commencement of training and will continue to be employed by the same employer for at least 90 days following completion of training.
- (k) "Trainee" means an eligible participant.
- (l) "State average hourly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours. (Stats 1989)

10201.5 With respect to funding appropriated in the annual Budget Act to the Employment Development Department for allocation by the Employment Training Panel and identified for training of workers in regions suffering from high unemployment and low job creation, including the working poor, the panel, notwithstanding subdivision (g) of Section 10201, may waive the minimum wage requirements included in that subdivision provided that the post-retention wage of each trainee who has completed training and the required training period exceeds his or her wage before and during training. This determination shall be made on a case-by-case basis to ensure that post-training improvement in earnings are sufficient to warrant the investment of public funds.

- 10202. (a) There is hereby established in the department the Employment Training Panel consisting of eight persons, seven of whom shall be appointed as provided in subdivision (b) and shall have experience and a demonstrated interest in business management and employment relations. The Secretary of the Trade and Commerce Agency, or his or her designee, shall also serve on the panel as an ex officio, voting member.
- (b) Two members of the panel shall be appointed by the Speaker of the Assembly, two members of the panel shall be appointed by the President pro Tempore of the Senate, and three members of the panel shall be appointed by the Governor. The Governor shall designate a member to chair the panel, and the person so designated shall serve as the chair of the panel at the pleasure of the Governor.

- (c) The appointive members of the panel shall serve for two-year terms, except that of the initial members of the panel, one initial appointee of each appointing power shall serve for a one-year term. Effective January 1, 1994, the terms of all appointive panel members shall expire. Thereafter, new members shall be appointed to serve for the same terms as provided in this subdivision for initial panel members.
- (d) Appointive members of the panel shall receive the necessary traveling and other expenses incurred by them in the performance of their official duties out of appropriations made for the support of the panel. In addition, each appointive member of the panel shall receive one hundred dollars (\$100) for each day attending meetings of the panel, and may receive one hundred dollars (\$100) for each day spent conducting other official business of the panel, but not exceeding a maximum of three hundred dollars (\$300) per month.

10203. The panel may meet as necessary at locations throughout the state. The panel shall maintain a minimum of three regional offices. The central office shall be located in Sacramento, two regional offices shall be located in the southern part of the state, and one regional office shall be located in the northern part of the state.

The panel will assign one person, with experience in meeting the needs of small businesses, to each of the regional offices for the purpose of developing training projects for small businesses and expediting the processing of training proposals from small businesses.

10204. (a) The panel shall coordinate its programs with local and state entities of the federal Job Training Partnership Act, as provided in paragraphs (3) and (4) of subdivision © of Section 10205. This coordination shall include, but not be limited to, the adoption of a plan, including regular sharing of data, for the coordination of training authorized pursuant to this Chapter with programs administered under Division 8 (commencing with Section 15000).
- (b) For purposes of serving the needs of small business, the panel may delegate its authority to approve contracts for new hire training to any entity defined in paragraphs (3) and (4) of subdivision (c) of Section 10205, provided the following conditions are met:
- (1) The panel determines that an entity to which it is delegating this authority meets the same standards as required of training agencies in Section 10210.
 - (2) The panel delegates its authority pursuant to this Section by a contract with the entity which limits the total amount of Employment Training Fund funds which are available to the entity, specifies a time limit within which those funds shall either be allocated or returned to the Panel, specifies the reasonable administrative costs to be allowed in administering the contract, and provides that no subcontract approved by the entity shall exceed fifty thousand dollars (\$50,000) per project without prior approval by the panel.

- (3) The subcontracts with employers and training agencies approved by the private industry council entity shall be for new hire training only and shall meet all the requirements of this Chapter and the policies established by the Panel. (Stats 1989)

10205. The panel shall do all of the following:

- (a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The initial three-year plan shall be submitted to the Governor and the Legislature not later than January 1, 1994. The initial update of the plan shall be submitted not later than July 1, 1994, and annual updates of the plan thereafter shall be submitted not later than July 1 of each year. In carrying out this Section, the Panel shall review information in the following areas:
 - (1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.
 - (2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.
 - (3) The demand for training by industry, type of training, and size of employer.
 - (4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.
 - (5) Changes in the demographics of the labor force and the population entering the labor market.
 - (6) Proposed expenditures by other agencies of federal Job Training Partnership Act funds and other state and federal training and vocational education funds on eligible participants.
- (b) The panel shall maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:
 - (1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new hire training and retraining.
 - (2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific

standards and a system for expedited review of proposals which meet the standards.

- (3) A system for expedited review of proposals which are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals which meet the needs identified in paragraph (2).
 - (4) The panel's goals and operational objectives with respect to meeting the needs of small employers.
 - (5) The research objectives of the Panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.
 - (6) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages. This list should identify those industries in which upgrade training is likely to encourage hiring of the unemployed on a backfill basis.
- (c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:
- (1) An employer or group of employers.
 - (2) A training agency.
 - (3) A private industry council with the approval of the appropriate local elected officials in the service delivery area.
 - (4) A grant recipient or administrative entity selected pursuant to Section 103 of the federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. However, the panel shall set contracting objectives with respect to minority-owned and female-owned businesses that are substantially similar to those required by Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code, Section 10108.5 of the Public Contract Code, and Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code). No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be

written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

- (d) Fund training projects that best meet the priorities specified in the three-year plan. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants. This chapter shall not be construed to require the panel to set aside funds based on the priorities established in the three-year plan.
- (e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placements, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.
- (f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.
- (g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.
- (h) Report annually to the Legislature, by November 30, on projects operating during the previous State fiscal year. These annual reports shall provide separate summaries of all of the following:
 - (1) Projects completed during the year, including their individual and aggregate performance and cost.
 - (2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract for this category as a

whole, and identifying any projects in which funds are expected to be disencumbered.

- (3) Projects terminated prior to completion and the reasons for the termination.
- (4) A description of the amount, type, and effectiveness of literacy training funded by the Panel.
- (5) Results of completed project evaluations.

In addition, based upon its experience administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. The chair of the panel shall appoint an advisory research council.

- (i) The advisory research council may, in addition to performing any other duty, conduct a review of panel policies with the goal of developing an improved process for developing, funding and implementing panel contracts as described in this section. This review may include, but shall not be limited to, an examination of all of the following:
 - (1) The necessity for minimum training hours.
 - (2) The ratio between fixed classroom training and structured onsite training.
 - (3) Training across job classifications within the same industry base.
 - (4) Voluntary training after hours.
 - (5) Grievance processes.
 - (6) Reimbursement time lines.
 - (7) Contract approval, amendment and modification processes.

On or before April 1, 1996, the panel shall submit an interim report to the Legislature that contains the advisory council's recommendations for an improved contracting process and addresses the factors listed above. On or before December 31, 1996, the panel shall submit a final report to the Legislature that contains the advisory council's recommendations on that subject.

- (j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Trade and Commerce Agency, in accordance with the

priorities for employment training programs set forth in paragraph (2) of subdivision (c) of Section 10200.

- (k) Coordinate and consult regularly with business groups and labor organizations, the State Job Training Coordinating Council, the State Department of Education, the Office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Trade and Commerce Agency.
 - (l) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the Panel and any adverse decision shall include a statement of the reason for the decision.
 - (m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. In no case shall the panel withhold information from the public regarding its operations, procedures, and decisions which would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). (Stats 1990)
 - (n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6. (Stats 1990)
10206. (a) The panel may allocate money in the fund for any of the following purposes:
- (1) Reimbursement of reasonable training costs, and administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:
 - (A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration, as determined by the panel, not to exceed the reasonable and normal costs for the training. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.
 - (B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits,

equipment, supplies, fees for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the panel may fund administrative costs of up to 25 percent of the training cost. (Stats 1990)

(C) The panel may modify the specific requirements of this paragraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(D) A contractor is prohibited from utilizing any funds earned or paid as advances or progress payments for the purpose of making payments to any other individual or entity, either directly or indirectly, for costs incurred as a finder's fee or for other compensation related to the predevelopment or development phase of a training program, which is based on a percentage of the preliminary or final panel award to the contractor for the training project.

(2) (A) Costs of program administration incurred under this chapter. These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

The panel's administrative costs for the 1997-98 and 1998-99 fiscal years, exclusive of the cost of administering Section 976.6, shall not exceed 15 percent of the amount annually appropriated for expenditure by the panel.

(B) For purposes of calculating the amount available for the panel's administrative costs pursuant to subparagraph (A), the base amount shall not include funds disencumbered from Employment Training Fund job-training contracts.

(C) Expenditures for marketing, research, and evaluations provided under the contract to the panel under paragraph (1) that otherwise would have been provided directly by the panel shall not be included in this limitation. (Stats 1997)

- (3) Service related to the purposes of this chapter provided by the Small Business Development Centers pursuant to an interagency agreement with the Trade and Commerce Agency.
- (b) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make any contribution, and the ability of the Employment Training Fund to meet the demand for training authorized by this chapter. Contributions shall be evaluated against plans required in subparagraph (A) of paragraph (2) of subdivision (b) of Section 10201 to sustain a commitment to workplace training after the contract ends. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

10206.5

- (a) The Bureau of State Audits shall conduct or contract for a comprehensive management review and evaluation of the panel. This review shall take account of all existing performance evaluations and shall include, but not be limited to, all of the following:
 - (1) The contracting policies, procedures and regulations of the panel.
 - (2) The panel's decision making processes for contracts.
 - (3) The cost and efficiency of the administration of internal panel contracts.
 - (4) The methods and procedures involved in setting the panel's internal administrative and procedural regulations.
 - (5) The internal administrative procedures and policies of the panel.
 - (6) Findings and recommendations for statutory and procedural changes necessary to enable the panel to effectively distribute contracts in accordance with the legislative findings and declarations specified in Section 10200.
- (b) The Bureau of State Audits shall submit the findings and recommendations of the review to the Legislature on or before October 1, 1996

- 10207. (a) The panel shall accept or reject a completed application within 60 days of the receipt by the panel.

- (b) The panel shall develop expedited procedures for reviewing proposals submitted by State agencies which are participants in a special interagency agreement with the panel for purposes of this Chapter. (Stats 1989)

10208. Nothing in this chapter shall be construed to preclude any employer from contracting with any public or private training entity for services, subject to the approval of the panel. (Stats 1982)

10209. (a) Contracts shall only be made for training in job-related vocational skills that are necessary for participants to attain a new job or retain an existing job with definite career potential and long-term job security. The contracts for vocational skills training may include ancillary training for job-related basic and literacy skills training if the panel finds that the training is necessary to achieve the objectives of the vocational training.
- (b) Contracts for projects involving on-the-job training shall specify skills and competencies to be gained as a result of the on-the-job training component of the project.
 - (c) The panel shall not approve any training proposal which facilitates the change in ownership of a business leading to the likelihood that an existing collective bargaining agreement would be declared void.
 - (d) To encourage a broad and equitable distribution of funds, the panel may require an employer who has previously received funds pursuant to this chapter for retraining of workers at a facility to contribute proportionately more to the cost of training of workers at the same facility.
 - (e) The panel may delegate to the executive director the authority to approve training contracts of up to one hundred thousand dollars (\$100,000), provided the contracts meet the requirements of this chapter and the policies established by the panel, and provided that the panel regularly reviews the action taken by the executive director pursuant to this subdivision.
 - (f) Payments shall be made in accordance with a performance contract under which partial payments may be made during training, a partial payment may be made on placement or retention of each trainee, and not less than 25 percent of the negotiated fee is withheld until the trainee has been retained in employment for 90 days after the end of training with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within 272 days of the completion of the training. In no case shall any payment be considered to have been earned until the trainee has been retrained in employment for 90

days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer.

- (g) Contracts for new hire training shall require the contractor to provide the placement services necessary to ensure the trainees are placed in jobs for which they have been trained. (Stats 1989)

10210. Contracts shall be made with training agencies only if the training agency can demonstrate all of the following:

- (a) The training agency has a satisfactory record of past performance in the placement and retention of former trainees and employer satisfaction with former trainees.
- (b) The training agency can demonstrate labor market demand for the proposed training. Proof shall include, but not be limited to, the documented need of specific employers for the workers proposed to be trained in the skills proposed by the training agency.
- (c) The training agency can demonstrate that the training prepares trainees in a manner satisfactory to employers.
- (d) The training agency can demonstrate that its accounting systems include controls adequate to check the accuracy and reliability of accounting data, promote operating efficiency, and assure compliance with government requirements and generally accepted accounting principles. The panel shall have full access at any time to these accounting systems to assure compliance with these standards. (Stats 1982)

10211. A trainee or employees participating in a training program pursuant to this chapter shall be considered to be in a training program having the approval of the director under Article 1.5 (commencing with Section 1266) of Chapter 5 of Part 1 of Division 1. (Stats 1982)

- 10212. (a) The panel may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part I (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for an executive director, and two assistant directors, who shall be exempt from state civil service.
- (b) The executive director shall be appointed by the Governor, and shall be well qualified for the position with experience in government. The appointment shall be for a term of four years. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the panel, with the approval of the panel. The executive director shall administer this chapter, with the approval of the panel, in the manner he or she deems necessary to conduct the work of the panel properly. With the approval of the Panel, the executive director may create divisions and subdivisions as necessary, and change and

abolish these divisions and subdivisions from time to time. The executive director may be removed from office, for cause, by a vote of five of the seven members of the panel.

- (c) The Governor shall appoint two assistant directors, to serve at the pleasure of the Governor. The assistant directors shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of their duties.
- (d) One assistant director shall have experience in serving the needs of small businesses, and shall, under the supervision of the executive director, manage the panel's efforts to ensure that employment training services are available to small businesses.

10212.1 All personnel of the panel shall be appointed, directed, and controlled only by the Panel or its authorized deputies or agents to whom it may delegate its powers. (Stats 1983)

10212.2 (a) The panel shall prepare a budget covering necessary administrative costs of the panel. The budget shall not be subject to change by the director except as agreed to by the panel. In the event that agreement cannot be reached, the Secretary of Health and Welfare shall attempt to reach a mutual agreement. In the event a mutual agreement cannot be reached, the final decision shall rest with the Governor.

- (b) The director shall furnish at the request of the panel equipment, supplies, and housing unless specified otherwise in this code, and non-personal and housekeeping services required by the panel and shall perform any other mechanics of administration as the Panel and the director may agree upon. (Stats 1983)

10213. The Employment Development Department shall cooperate with the panel by offering necessary technical assistance, which may include, but is not limited to, labor market information, projections of occupational demand, and information and advice on alternative training strategies. (Stats 1982)

10213.5.(a) The Trade and Commerce Agency shall determine those firms considering locating or expanding businesses in the state in order to enable the Employment Training Panel to expedite the processing of contracts for these firms pursuant to subdivision (d) of Section 10205. The Trade and Commerce Agency shall also provide technical assistance by marketing the Employment Training Fund to newly locating or expanding businesses in the state and by assisting in the packaging of employer contracts for training of eligible participants from the Employment Training Fund.

- (b) The Small Business Development Center program in the Office of Small Business in the Trade and Commerce Agency shall provide information and applications for funding by the panel to its clients. (Stats 1989)

10214. To assist the panel and the Legislature in assessing the impact of this chapter over an extended period of time, the Employment Development Department shall develop and maintain a continuous employment, wage, and benefit history of participants in projects authorized pursuant to this chapter and of a random sample of unemployment insurance claimants. The design of this history shall be subject to the review and approval of the panel and the review and recommendations of the Legislative Analyst. (Stats 1982)

10214.5.(a) The panel may allocate up to 20 percent of the annually available training funds for the purpose of funding special employment training projects for the purposes of any of the following:

- (1) Supporting retraining for frontline workers, as defined in subdivision (a) of Section 10200, in occupations that pay 100 percent of the state or regional average hourly wage when a business is difficult to serve under the Panel's standard project format; provided that the employment may not result in earnings of less than 95 percent of the state average hourly wage.
- (2) Encouraging the development of new industries, including the electric and clean fuel vehicle industry and other advanced transportation technology industries, that contribute to high skilled employment and economic vitality in California.
- (3) Supporting efforts that address the training and employment of workers affected by defense industry cutbacks and military base closures.
- (4) Stabilizing employment in fields where there is a demonstrated deficit of trained employees and clear career advancement opportunities.
- (5) Supporting small business entrepreneurial training in business management and related skills for owners to enhance the competitive position of businesses with at least one full-time but fewer than 10 full-time employees that are registered with the Employment Development Department and have paid unemployment insurance taxes for at least six months prior to contract development. The panel may waive, if necessary, the minimum wage requirements pursuant to subdivision (g) of Section 10201, and employment retention provisions specified in subdivision (f) of Section 10209 and instead require that the entrepreneurial business, at a minimum, retain the same number of full-time workers it employed prior to the start of training for at least 90 days after the completion of training by the owner.

Notwithstanding any other provision of this chapter, participants in these projects need not meet the same eligibility criteria as outlined in paragraph (1) of subdivision (a) of Section 10200 and subdivision (b) of Section 10201. In addition, the panel may allocate funds under this section for the development of training materials and training programs that contribute to the development of new industries in the state.

- (b) The panel may allocate up to 15 percent of the funds specified in subdivision (a) for job-related vocational and literacy skills training and the employment of individuals with barriers to full-time, stable employment. These barriers may include, but shall not be limited to, language, basic skills, and occupational literacy barriers to employment. These individuals shall meet the eligibility criteria specified in subdivision (b) of Section 10201. Preference shall be given to contractors that can provide trainees with the comprehensive services necessary to successfully complete training, overcome barriers, secure gainful employment, and become self-sufficient. The panel may waive, if necessary, the eligibility criteria outlined in paragraph (1) of subdivision (a) of Section 10200, the minimum wage requirements pursuant to subdivision (g) of Section 10201 and the employment retention provisions specified in subdivision (f) of Section 10209, and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers. In addition, the panel may allocate funds under this subdivision for reasonable child care and transportation costs for trainees.
 - (c) The panel shall adopt minimum standards for consideration of proposals to be funded pursuant to this section.
 - (d) The panel may not delegate its authority to approve contracts written pursuant to this section.
 - (e) It is the intent of the Legislature in providing the authority for these projects that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200. (Stats 1992, amended)
- 10214.6. (a) The panel may allocate up to ten million dollars (\$10,000,000) to fund special employment training agreements with any entity described in subdivision (c) of Section 10205 or any public entities, including federal, state, and local agencies, that are related to and in response to the establishment of a federal Defense Finance and Accounting Services (DFAS) facility at the existing site of Norton Air Force Base in San Bernardino, California for the purpose of contributing to the economic stability of the geographic area in which the facility is located.
- (b) The panel shall adopt minimum standards for the consideration of proposals to be funded pursuant to this section.
 - (c) Notwithstanding any other provision of this chapter;
 - (1) Public agency employers need not meet the criteria outlined in subdivision (a) of Section 10201.

- (2) Participants in projects funded pursuant to this section shall either meet the eligibility criteria outlined in subdivision (b) of Section 10201 or be determined by the panel to have been displaced or likely to be displaced due to the closure of the Norton Air Force Base facility.
- (3) Notwithstanding subdivision (c) of Section 10205, the panel may approve employment training contracts with any public employer pursuant to this section for periods exceeding 24 months.
- (4) Contracts approved by the panel pursuant to this section need not meet the requirements of paragraph (5) of subdivision (b) of Section 10205.
- (5) The panel may approve contracts pursuant to this section with termination dates not to extend beyond December 31, 1997.
- (d) The panel may not delegate its authority to approve contracts pursuant to this section.
- (e) This section shall become operative only if Norton Air Force Base located in the County of San Bernardino is selected as the site for a federal Defense Finance and Accounting Services facility on or before February 1, 1995.
- (f) It is the intent of the Legislature in providing the authority for this special public entity project that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

10214.7. The panel shall allocate funds available in the annual Budget Act for training programs designed for individuals who are currently working and receiving benefits under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or who are currently working and have received CalWORKs benefits within one year of the commencement of the training program.

- (a) It is the intent of the Legislature in providing authority for these training programs that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.
- (b) Notwithstanding any other provisions of this chapter, the eligibility criteria for individuals trained under this section shall be employment with an eligible employer as defined in subdivision (a) of Section 10201 and:
 - (1) Receipt of CalWORKs benefits at the time training begins, or
 - (2) Receipt of CalWORKs benefits within one year of the time training commenced.
- (c) For purposes of this section, the panel may waive, if necessary, any of the following:

- (1) The employer eligibility criteria outlined in paragraph (1) of subdivision (a) of Section 10200.
- (2) The minimum training wage requirements pursuant to subdivision (g) of Section 10201.
- (3) The employment retention provisions specified in subdivision (f) of Section 10209 and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers.
- (d) Notwithstanding any other provisions of this chapter, the panel shall consider proposals that use innovative strategies and training options to enable current and prior CalWORKs recipients and eligibles to retain employment, including, but not limited to, projects that provide basic skills training.
- (e) The panel shall adopt administrative procedures for approving and administering contracts under this section to expedite contracts, minimize barriers to completion of training, and facilitate the training of single trainees and small groups of trainees from one worksite.

10215. The funding of individual project grants by the panel may take the form of either direct grants to the employer or training agency, or credits to the employer's liability for unemployment insurance contributions or reimbursements. Credits to the employer's liability for unemployment insurance contributions or reimbursements shall be drawn from the Employment Training Fund. (Stats 1982)

10217. Funds in the Employment Training Fund created by Section 1610 shall be appropriated annually in the Budget Act by the Legislature for allocation by the panel for the purposes of this chapter, except those funds determined by the Legislature to be necessary to administer Section 976.6 and Article 6 (commencing with Section 1610) of Chapter 6 of Part 1 of Division 1 shall be appropriated to the department. (Stats 1984)

- 10218.5.(a) This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2002, deletes or extends that date.
- (b) The panel may enter into contracts that permit employment training through June 30, 2002, however, no contract shall have a termination date that extends beyond December 31, 2002.
 - (c) In the event a later enacted statute does not extend the January 1, 2002, repeal date of this chapter, the panel shall enter into an agreement with another state agency, to be selected by the Governor, that shall act on behalf of the panel for the sole purpose of contract administration, which shall include, but is not limited to, monitoring performance, generating

amendments to downsize the contracts, closing out contracts, auditing contracts, and making payment for any contracts that extend beyond January 1, 2002.

- (d) Any agency acting on behalf of the panel pursuant to this section may seek a budget appropriation or augmentation for both the administration of the program and payment to contractors. (Stats 1992)

Supplemental References to ETP Legislation

Division 1, Part 1, Chapter 4, Article 3 of the Unemployment Insurance (UI) Code:

976.6. In addition to other contributions required by this division, every employer, except an employer defined by Section 676, 684, or 685, and except an employer which has elected an alternate method of financing its liability for unemployment compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall pay into the Employment Training Fund contributions at the rate of 0.1 percent of wages specified in Section 930. The contributions shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5. (Stats 1990).

This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

Division 1, Part 1, Chapter 6, Article 6 of the UI Code

1610. There is in the State Treasury a special fund known as the Employment Training Fund. There shall be deposited in or transferred to this fund all contributions collected from employers pursuant to Section 976.6. Costs incurred for the purposes specified in Section 1611 in fiscal year 1992-93 shall be reimbursed and thereafter shall be annually appropriated by the Legislature from the Employment Training Fund.

1611. Money in the Employment Training Fund shall be expended only for the purposes of Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3, and for the costs of administering this article and Section 976.6, except:

- (a) With the approval of the Legislature, the fund or contributions to it may be used to pay interest charged on federal loans to the Unemployment Fund.
- (b) Commencing with allocations made to the Employment Training Panel in the 1992-93 fiscal year, any moneys allocated to the panel in a fiscal year that are not encumbered by the panel in that fiscal year, shall revert to the Unemployment Insurance Fund.
- (c) Commencing with the 1994-95 fiscal year, and for each fiscal year thereafter, to the extent that interest is earned on the money in the Employment Training Fund, that interest shall be used to fund up to 50 percent of the costs of the State-Local Cooperative Labor Market Information Program established pursuant to Section 10533, but in an amount not to exceed three million one hundred thousand dollars (\$3,100,000).
- (d) It is the intent of the Legislature that the panel shall closely monitor program performance and expenditures for employment training programs administered by the panel, and that the panel shall expeditiously disencumber funds that are not needed for employment training

program completion. Commencing with the 1992-93 fiscal year, those moneys that are disencumbered during the fiscal year that are not re-encumbered during the same fiscal year shall revert to the Unemployment Insurance Fund.

- 1611.5 (a) Notwithstanding Section 1611, the Legislature may appropriate from the Employment Training Fund twenty million dollars (\$20,000,000) in the Budget Act of 1997 and **five million dollars (\$5,000,000) in the Budget Act of 1999** for training programs designed for workers who are current or recent recipients of benefits under the CalWORKs program pursuant to Section 10214.7. **The Legislature may appropriate from the Employment Training Fund thirty million dollars (\$30,000,000) in the Budget Act of 1999 and the Budget Act of 2000 for purposes of funding the local assistance portion of welfare-to-work activities under the CalWORKs program, provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, as administered by the State Department of Social Services.**
- (b) Funds available pursuant to the Budget Act of 1997 pursuant to this section that are not encumbered in the 1997-98 fiscal year may, upon appropriation by the Legislature, be carried over into the 1998-99 fiscal year for expenditures consistent with Section 10214.7.
- 1611.6. Notwithstanding the provisions of subdivision (d) of Section 1611, of the funds appropriated to the Employment Training Panel by the Budget Act of 1998, all funds, not encumbered by June 30, 1999, shall be returned to the Employment Training Fund.
1612. This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2002, deletes or extends that date.

The 2000-01 Budget Act, Chapter 52

5100-001-0514 - For support of Employment Development Department, for payment to Item 5100-001-0870, payable from the Employment Training Fund.....**83,688,000**

Provisions:

1. Notwithstanding subdivision (a) of Section 2.00 of this act, funds disencumbered from Employment Training Fund training contracts during **2000-01** are hereby appropriated for transfer to, and in augmentation of, this item for allocation by the Employment Training Panel for training contracts.
2. Any funds appropriated for the Employment Development Department, State-Local Cooperative Labor Market Information Program, if not expended by June 30, **2001**, shall be made available to the Employment Training Fund for purposes of funding job training contracts.

3. **Of the amount appropriated in this item, \$15,000,000 shall be used to fund training projects administered by the Employment Training Panel in areas of high unemployment and low job creation, including a focus on the working poor.**
4. In order to reduce the incidence of contract disencumbrances, the Employment Training Panel shall adopt performance goals of annual reductions. Disencumbrances shall be reduced to no more than 25 percent **of available funds** for the 2000-01 fiscal year and 22 percent for the 2001-02 fiscal year.

The 1998-99 Budget Act, Chapter 329, Section 56.

Provisions:

- (a) The Legislature hereby finds and declares that the Employment Training Panel established pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3 of the Unemployment Insurance Code is created to provide training contracts for eligible employers throughout the state. However, only a small portion of training funds have been made available to employers and businesses in rural counties. The Legislature further finds that the existence of professional contract application preparers in urban areas may have created a competitive disadvantage for employers in rural counties who must compete for limited funds without the benefit of such expertise.
- (b) In order to increase the number of contracts and increase the geographic distribution of funds, the Employment Training Panel shall conduct outreach and offer technical assistance to employers in rural counties. Outreach shall include information on the availability of training funds, general contract requirements and specific contracts with the panel who can provide technical assistance. The panel shall report to the Chairs of the fiscal and policy committees of the Legislature on the results of these activities no later than December 1, 1999.

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